**PATENT**

Attorney Docket No. KNAUTHE-08178

IN THE UNITED STATES PATENT AND TRADEMARK OFFICEIn re Application of: Jürgen Hescheler *et al.*

Serial No.: 10/084,960

Group No.: 1632

Filed: 02/28/02

Examiner: Voitach

Entitled: Fluorescent proteins as cell-type specific reporters

Declaration of Jürgen HeschelerAssistant Commissioner for Patents
Washington, D.C. 20231

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)(1)(IXA)

I hereby certify that this correspondence (along with any referred to as being attached or enclosed) on the date shown below, being deposited with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231

Dated: 2-4-04 By: *Mary Ellen White*

I, Dr. Jürgen Hescheler, state as follows:

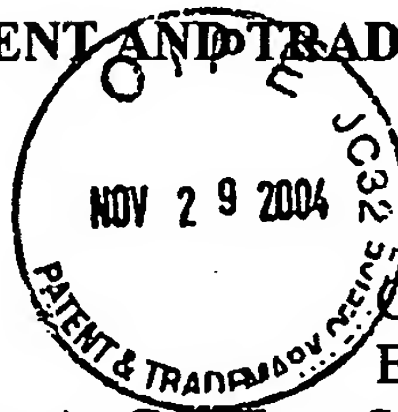
1. My present position is: Professor and Director at the Institute for Neurophysiology of the University of Cologne.
2. I have reviewed the above captioned patent application, of which I am an inventor, the Office Action mailed August 29, 2001 in the parent case, and the cited references.
3. In the parent application, the Examiner rejected the Claims as obvious over Zernicka-Goetz et al. I note that the promoter used in Zernicka-Goetz et al. is a cdc2 promoter. This promoter is expressed in undifferentiated, proliferating stem cells. In this respect, the Examiner's attention is directed to page 1135, column 2, which teaches that the CDC2 promoter is active in proliferating, undifferentiated cells, and inactive in ES cells that "exit the cell cycle and differentiate in culture."
4. The fact that a GFP gene can be used as reporter of expression from a development-dependent promoter that is substantially inactive in undifferentiated stem cells is not reasonably

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Serial No.: 10/084,960
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Entitled: **Fluorescent Proteins As Cell Type Specific Reporters**



Group No.: 1632
Examiner: J. T. Voitach

DECLARATION OF J. MITCHELL JONES

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Date: 11-24-04

By: Mary Ellen Waite

Mary Ellen Waite

I, John Mitchell Jones, hereby verify that the plasmid pCX-(alpha-actin)GFP-Neo has been deposited under the Budapest Treaty and that the plasmid will be irrevocably and without restriction released to the public upon issuance of a patent. The International Form confirming the deposit is attached hereto.

Dated: 11-24-04

J. Mitchell Jones

Registration No. 44,174

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